Automotive Trades District Lodge No. 190 of Northern California and International Association of Machinists and Aerospace Workers, District Lodge No. 160, Automotive Machinists Lodge No. 289 and Sea-Land Service, Inc./Container Stevedoring, Inc. and International Longshoremen's and Warehousemen's Union, AFL-CIO and Pacific Maritime Association. Case 32-CD-147

January 10, 1997

# DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

The charge in this Section 10(k) proceeding was filed June 21, 1996, and amended July 2, 1996, alleging that the Respondent, Automotive Trades District Lodge No. 190 of Northern California and International Association of Machinists and Aerospace Workers, District Lodge No. 160, Automotive Machinists Lodge No. 289 (IAM) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Sea-Land Service, Inc. and Container Stevedoring, Inc. (the Employer) to assign certain work to employees it represents rather than to employees represented by International Longshoremen's and Warehousemen's Union, AFL-CIO (ILWU). The hearing was held on August 21 and 22 and September 6, 1996, before Hearing Officer A. Donald Rhoads.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

## I. JURISDICTION

Sea-Land Service, Inc., a Delaware corporation, is the operator of a fleet of oceangoing cargo vessels, moving in interstate and international commerce, with annual revenues in excess of \$3 billion. Container Stevedoring, Inc. is a sister corporation¹ engaged in stevedoring services, operating terminals at maritime facilities in the West Coast of the United States, including Oakland, California and Tacoma, Washington. Its annual revenues are in excess of the minimum required by the National Labor Relations Act. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that both IAM and ILWU are labor or-

ganizations within the meaning of Section 2(5) of the Act.

## II. THE DISPUTE

# A. Background and Facts of the Dispute

The Employer is signatory to a collective-bargaining agreement with the IAM (the West Coast Maintenance Agreement) covering a unit of machinists at the Employer's terminals located at, inter alia, Oakland, California and Tacoma, Washington. Pursuant to that agreement, since about 1969, the Employer has assigned the inspection and repair of containers and chassis to employees represented by the IAM. The Employer is also a member of the Pacific Maritime Association (PMA), and by virtue of that membership, the Employer is signatory to the July 1, 1993-July 1, 1996 Pacific Coast Clerks' Contract Document (PCCCD) between the PMA and the ILWU. The PCCCD covers marine clerks at the west coast ports.2 The Employer had not, prior to the instant dispute, assigned inspection work to employees represented by the ILWU.

The Employer's Oakland and Tacoma terminals are fenced enclosures containing inbound and outbound gates at which inspections are performed. During the inbound gate process, a truck and container chassis arrive at the inspection area where an IAM-represented employee is assigned. That employee walks completely around the entire unit, observing all the sides, doors, and undercarriage. He looks specifically for any defects or problems with the equipment that would make the equipment unsafe for lifting to the vessel. He then evaluates whether any repairs are necessary and what degree of repair might be needed. Based on his knowledge and experience, the mechanic then decides whether to perform any necessary repairs at the gate, accept the equipment subject to further repair at the Sea-Land facility, or reject the equipment if it is defective enough to be unsafe for lifting purposes. The mechanic performs the initial assessment of the damage and evaluates the time and material necessary to make the repair. The mechanics then enter the information on a logsheet or computer.

The outbound inspection determines whether equipment leaving the terminal meets applicable state highway safety ("roadability") requirements. Employees represented by the IAM perform the roadability inspections at the outbound inspection bays equipped with the tools and equipment needed to make immediate repairs.<sup>3</sup> The mechanics do a walkaround inspection and

<sup>&</sup>lt;sup>1</sup> Both Sea-Land Service, Inc. and Container Stevedoring, Inc. are wholly-owned subsidiaries of the CSX Corporation.

<sup>&</sup>lt;sup>2</sup> At the time of the hearing a successor agreement had not been executed.

<sup>&</sup>lt;sup>3</sup> At the hearing, ILWU stated that it was not seeking the roadability inspections or repair of outbound equipment, but it did not disclaim interest in other aspects of the outbound inspection work such as recording damage.

make minor repairs. They then note on a logsheet or computer the repairs that were needed and completed.

On May 19, 1994, the ILWU submitted a grievance (Union Claim #2–94) claiming that the Employer was violating the PCCCD by assigning employees other than clerks to inspect containers and input that information into a computer. The issue was referred to the Coast Labor Relations Committee.

On October 18, 1995, employees represented by the ILWU were directed by the ILWU to begin inspecting containers at the Employer's Oakland terminal. As a result, long lines at the inbound and outbound gates developed. The Employer contacted the PMA which initiated an arbitration proceeding to resolve the issue. On October 19, 1995, an arbitration proceeding took place before relief area arbitrator Carl Smith, who found that although there had been a pileup of truckers and containers, there had been no work stoppage or slowdown. He further found that the employees represented by the ILWU were doing work they were entitled to perform under Section 1.251 of the PCCCD. The Employer appealed that ruling and it was vacated by Area Arbitrator Gerald M. Sutliff on October 30, 1995.4 The Sutliff award ordered the ILWU to cease and desist from performing the inspection work and referred the case to the Joint Labor Relations Committee. The ILWU-represented clerks subsequently stopped inspecting the containers at the inbound and outbound gates. The dispute was not resolved by the Joint Labor Relations Committee and the matter was then referred to the Coast Arbitrator Sam Kagel. On February 13, 1996, Kagel found that the inspection work was covered by the PCCCD and awarded the inspection work to employees represented by the ILWU (the Kagel award). The IAM was not a party to any of the arbitration proceedings.

As a result of the Kagel award, ILWU-represented clerks again began performing the inspection work at Oakland and the Employer advised the IAM that it would henceforth assign the inspection work to employees represented by the ILWU. On June 6, 1996, Michael Day, the Directing Business Representative of the IAM, sent a letter to the Employer stating that the IAM would take "economic action" if the inspection work at Oakland was not assigned to employees represented by the IAM. In light of the Kagel award, the ILWU also claimed the inspection work at Tacoma. Subsequently, by letter dated June 27, 1996, Day threatened economic action if the inspection work at Tacoma was assigned to employees represented by the ILWU.

## B. Work in Dispute

The notice of hearing describes the work in dispute as work tasks involving the gate inspection of inbound containers and trucking equipment at the Port of Oakland, California, and the Port of Tacoma, Washington. The Employer and the IAM contend, and the hearing officer agreed, that the scope of the work in dispute should be broadened to include the inspections at the outbound gates as well. The ILWU objects to the broadening of the disputed work on the ground that the underlying unfair labor practice charges and the notice of the 10(k) hearing were limited to the inbound inspection work and due process requires that the work in dispute be limited to that work. Contrary to the contention of the ILWU, we find no due process violation in the broadening of the scope of the disputed work.5 In cases in which the parties are unable to agree on a definition of the work in dispute, it is the Board's function to define the disputed work.6 The Board may, after examining the evidence, broaden the work in dispute beyond what is contained in the notice of 10(k) hearing.7 Because the parties could not agree to the definition of the work in dispute, the hearing officer allowed evidence concerning both the inbound and outbound inspection work to enable the Board to make a finding as to the work for which competing claims exist.8

Having reviewed that evidence, we agree with the hearing officer that the work in dispute involves both the inbound and outbound inspection of containers and trucking equipment at Oakland and Tacoma. The evidence at the hearing clearly showed that the dispute was not limited to the inspections at the inbound gates. The Kagel award was not limited to inbound inspections and the ILWU has not disclaimed interest in the outbound work. Accordingly, we find that the work in dispute is defined as the work functions involving the gate inspection of inbound and outbound containers and trucking equipment at the Port of Oakland, California and the Port of Tacoma, Washington.

# C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) has been vio-

<sup>&</sup>lt;sup>4</sup> Sutliff found that Smith had exceeded his authority by ruling on the substantive issue of whether the work performed by the ILWU-represented employees is within their jurisdiction. Sutliff further found that the ILWU had violated the grievance procedure by directing employees it represents to inspect the containers.

<sup>&</sup>lt;sup>5</sup>This matter was raised at the beginning of the hearing and was fully litigated.

<sup>&</sup>lt;sup>6</sup>See, e.g., Construction & General Laborers Local 146 (Modern Acoustics), 267 NLRB 1123 (1983).

<sup>&</sup>lt;sup>7</sup> Modern Acoustics, supra at 1124.

<sup>&</sup>lt;sup>8</sup>The ILWU excepts to the hearing officer's ruling which permitted testimony regarding outbound work functions and moves the Board to strike such evidence from the record. Because it is the hearing officer's responsibility to receive evidence to enable the Board to determine the work in dispute, we affirm the hearing officer's ruling allowing evidence concerning the outbound inspection work to be admitted at the hearing and we deny the ILWU's motion to strike the evidence concerning the outbound work.

lated and that the work in dispute should be awarded to employees represented by the IAM. The Employer relies on its past practice for over 25 years, the essential skills and knowledge of IAM-represented employees, the economic impact due to the differences in cost between the two unions, and the increased efficiency of operations when the work is performed exclusively by employees represented by the IAM. The Employer further argues that the Board's determination is controlling and would override a prior arbitration decision granting jurisdiction to employees represented by the ILWU. In addition, the Employer argues that the ILWU should be prohibited from seeking payment in lieu of work in contravention of the Board's 10(k) award. The Employer also requests that the determination of the dispute should be broad enough to encompass the geographical area where Sea-Land does business on the West Coast and where the jurisdiction of the competing unions coincide.

The IAM contends<sup>9</sup> that the disputed work should be awarded to employees it represents because of the Employer's preference and past practice, economy, and efficiency of operations, its collective-bargaining agreement with the Employer, and employees' relative skills. It also argues that the Kagel award is not controlling because the IAM did not participate in that proceeding and Kagel did not consider the factors other than the ILWU contract which are relevant in a 10(k) determination of dispute.

The ILWU contends that there is no reasonable cause to believe that the IAM violated Section 8(b)(4)(D) of the Act. The ILWU argues that the record fails to establish "reasonable cause" because the alleged threat of "economic action" by the IAM was not bona fide, and the Employer was directly involved in creating the dispute. The ILWU also claims that the notice of hearing should be quashed because the Employer is failing to conform to a "certification of the Board determining the bargaining representative for employees performing such work." The ILWU further contends that assuming that this case presents a jurisdictional dispute within the meaning of Section 10(k) of the Act, the work in dispute 10 should be awarded to employees represented by the ILWU. The ILWU relies on its collective-bargaining agreement and Board certification, as well as the area and industry practice, arbitration award, and efficiency and safe-

## D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to be-

lieve that Section 8(b)(4)(D) has been violated. This requires a finding that there is reasonable cause to believe that a party has used proscribed means to enforce its claim and that there are competing claims to disputed work between rival groups of employees.

As discussed above, for approximately 25 years, employees represented by the IAM had been performing inspection work at the inbound and outbound gates in Oakland. On October 18, 1995, however, the ILWU directed the employees it represents to begin performing this work. A series of arbitration decisions ensued, culminating in an arbitration award by Coast Arbitrator Sam Kagel who ruled that the work was covered by the Employer's contract with the ILWU and that the work must be awarded to employees represented by the ILWU. As a result of the Kagel award, the Employer informed the IAM that the disputed work would henceforth be assigned to employees represented by the ILWU. In response, the IAM, by letters dated June 6 and 27, 1996, threatened "economic action" at the Ports of Oakland and Tacoma if the work was assigned to employees represented by the ILWU. Based on this evidence, we conclude that there are active competing claims to the disputed work between rival groups of employees.

We also find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The ILWU argues that the alleged threat of economic action was a sham, orchestrated by the Employer and the IAM for the explicit purpose of invoking the Board's 10(k) jurisdiction and avoiding an arbitration award requiring the Employer to assign the work to employees represented by the ILWU. Contrary to the ILWU's contention, we cannot find that the IAM threats were not genuine. The statements on their face constitute threats to take economic action and there is no evidence that the representative of the IAM who made the threats was not serious in making the threats<sup>11</sup> or had in any way colluded with the Employer in this matter.<sup>12</sup>

We also reject the ILWU's contention that the threat was not genuine because there is a no-strike clause in the IAM's collective-bargaining agreement. The existence of a no-strike clause in a union's collective-bargaining agreement does not provide a basis for a finding that a threat by that union is a sham. See *Team*-

<sup>&</sup>lt;sup>9</sup> The IAM did not file a brief, but argued orally at the hearing. <sup>10</sup> As noted above, the ILWU argues that the work in dispute is limited to the inspections at the inbound gates only.

<sup>&</sup>lt;sup>11</sup> Day testified that he was "dead ass serious" about the threat. <sup>12</sup> The ILWU relies on testimony that subsequent to the issuance of the Kagel award, Sea-Land officials met with a representative of the ILWU and stated that Sea-Land would do whatever it could to "get around" the Kagel award, and that at no time did the Employer ever indicate to the ILWU that it had decided to abide by the Kagel award and assign the work to ILWU-represented employees. The fact that the Employer was dissatisfied with the Kagel award and may have wanted to "get around" that award does not compel a finding that the threats by the IAM were not genuine. The ILWU has presented no evidence of collusion between the Employer and the IAM.

sters Local 6 (Anheuser-Busch), 270 NLRB 219, 220 (1984).<sup>13</sup>

We also find that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Although, as noted above, an arbitration award issued which awarded the disputed work to employees represented by the ILWU, the IAM was not involved in that proceeding and has not agreed to be bound by that arbitration award. There is nothing in the applicable collective-bargaining agreements which binds all three parties to the same method for resolving jurisdictional disputes. Accordingly, we find that the dispute is properly before the Board for determination and we deny the ILWU's motion to quash the notice of hearing.<sup>14</sup>

# E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting), 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. Machinists Lodge 1743 (J. A. Jones Construction), 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

## 1. Board certifications

The ILWU relies on a Board certification in *In re Shipowners' Assn. of the Pacific Coast (Shipowners)*, 7 NLRB 1002 (1938), in which the Board certified the ILWU as the representative of "workers who do longshore work in the Pacific Coast ports of the United States for the companies which are members of Waterfront Employers of Seattle, Waterfront Employers of Portland, Waterfront Employers Association of San Francisco, Waterfront Employers Association of Southern California, and Shipowners' Association of the Pacific Coast." The ILWU argues that inspection of cargo and containers is traditional ILWU work covered by the Board's certification. This general coast-wide certification predates the existence of the PMA, the Employer's presence on the West Coast, and the ad-

vent of containers on the docks. There is no specific certification for the gate inspection work at issue here. Under these circumstances, we find the ILWU's coast-wide certification to be insufficient to warrant a finding that the Employer is "failing to conform to an order or certification of the Board determining the bargaining representative for employees performing [the disputed] work." We also find that this certification is insufficient to favor awarding the disputed work to employees represented by the ILWU. Accordingly, this factor does not support awarding the work in dispute to either group of employees.

# 2. Collective-bargaining agreements

The Employer is signatory to collective-bargaining agreements with both Unions and each Union claims that its contract covers the work in dispute. Article 1, section 2 of the "West Coast Maintenance Agreement" between the Employer and the IAM provides that the agreement covers, but is not limited to, the following types of work:

Maintenance . . . and fender work, painting, rebuilding, dismantling, assembling, repairing, installing, erecting . . . and burning (or grinding processes connected therewith), inspecting, diagnosing, cleansing . . . or conditioning of all units and auxiliaries (including refrigeration and air conditioning units) relating to passenger cars, buses, pickups, motorcycles, tractors, trucks, trailers, cargo containers, dollies, fork lifts, shovels, trench digging and excavating equipment and all other types of powered machinery.

Accordingly, the work in dispute appears to be covered by the Employer's collective-bargaining agreement with the IAM.

Section 1.251 of the 1993–1996<sup>16</sup> Pacific Coast Clerks' Contract Document (PCCCD) between the ILWU and the Pacific Maritime Association, which is binding on the Employer, defines the clerk classification as follows:

An employee responsible for performing any or all of the following clerical functions related to receiving, delivering, checking, tallying, yard and/or cargo area inventorying (including containers), sorting, spotting, and inspecting cargo and/or containers for the purpose of taking and recording exceptions, including the recording of necessary

<sup>&</sup>lt;sup>13</sup> In support of its argument that the threat was not genuine, the ILWU also relies on the fact that there was an "utter lack of sanction" for economic action from the IAM membership or the International. Day testified, however, that the International constitution does not require a ratification vote to call a work stoppage over jurisdiction. We find the IAM's failure to request a sanction for economic action to be insufficient to warrant a finding that the threats were a sham.

<sup>&</sup>lt;sup>14</sup>For the reasons set forth in sec. E(1) below, we also reject the ILWU's argument that this proceeding should be quashed because the Employer is failing to conform to a "certification of the Board determining the bargaining representative for employees performing such work."

<sup>&</sup>lt;sup>15</sup>The current agreement is effective, by its terms, from April 1, 1995, through March 31, 1999.

<sup>&</sup>lt;sup>16</sup> Although a successor agreement had not yet been ratified at the time of the hearing, there was testimony that sec. 1.251 had not been changed in the tentative agreement. The 1993–1996 agreement was in effect at the time the dispute arose. We find its subsequent expiration to be insignificant. Laborers Local 282 (Hartman-Walsh Painting), 263 NLRB 290, 292 (1982).

notations and the keeping of such records as may be required by the individual employer.

We find that this contract also appears to cover the disputed work. Accordingly, because both contracts arguably cover the work in dispute, we find that this factor does not favor awarding the work in dispute to either group of employees.

# 3. Employer preference

The Employer prefers that the work in dispute be performed by employees who are represented by the IAM. Accordingly, this factor favors awarding the work in dispute to the employees represented by the IAM.

# 4. Employer past practice

Since about 1969, the Employer has been assigning the work in dispute to employees represented by the IAM. Accordingly, we find that this factor favors awarding the work in dispute to employees represented by the IAM.

# 5. Area and industry practice

The Employer submitted a matrix of terminals around the Port of Oakland describing the general practice of other companies with respect to inspection work. The information was developed through a survey taken by Elvis Ganda, the Employer's manager, terminal operations. The matrix shows that there is no uniform area practice concerning inspection work.<sup>17</sup> ILWU presented Frank Billeci, the pPresident of ILWU Local 34, who testified that ILWU-represented clerks perform inspection work in every facility in the San Francisco Bay Area except Sea-Land.<sup>18</sup> He further

<sup>17</sup> With respect to inbound inspections, the matrix indicates that at Maersk ILWU clerks inspect major damage only, at Matson there is no inbound inspection, at Yusan an ILWU clerk performs a cursory inspection only, at APL an ILWU mechanic inspects and a clerk does input, at Trapac clerks perform cursory inspection only and an ILWU mechanic inspects refrigerator containers only, at Howard an ILWU clerk performs a cursory inspection only and does not determine cost or repair time, and at MTC an IAM mechanic inspects chassis and an ILWU clerk performs a cursory inspection of containers only. With respect to outbound inspections, the matrix indicates that at Maersk there is no inspection but an IAM mechanic does a roadability check on the container, at Matson an IAM mechanic does a roadability inspection, at Yusan an ILWU clerk inspects for major damage only and there is no roadability inspection, at APL an ILWU mechanic does a roadability inspection and a clerk does input, at Trapac ILWU clerks perform a cursory inspection only, at Howard there are no outbound inspections but there is an IAM mechanic who performs roadability and repair work in the yard, and at MTC there is no inspection by clerks and an IAM mechanic performs a roadability inspection in the yard.

<sup>18</sup> Billeci submitted an exhibit indicating that ILWU-represented clerks perform container inspections for damage/safety at MTC 7th Street/Oakland, MTC 9th Avenue/Oakland, Matson/Oakland, Trapac/Oakland, TransBay/Oakland, Yusen/Oakland, Army Base/Oakland, SSA/Oakland, Maersk/Oakland, SSA Term. 3/Richmond, and

testified that Ganda's matrix was incomplete, inaccurate, and misleading. Billeci also testified that at the Ports of Stockton and Sacramento, California, as well as Portland and Vancouver, clerks inspect containers for damage. Clerks also perform inspection work at American President Lines in Seattle, as well as other locations within the jurisdiction of ILWU Local 52 in Seattle. In the Ports of Los Angeles and Long Beach, with the exception of Sea-Land, ILWU-represented clerks perform the inspection work exclusively.

Craig Wheeler, a marine clerk represented by ILWU in Tacoma, has performed inbound inspection work at the Maersk and Evergreen facilities, and inbound and outbound inspections at the K-Line facility in Tacoma. Wheeler testified that Sea-Land is the only container facility in Tacoma where ILWU clerks do not do the inbound inspection.

The evidence regarding area and industry practice is inconclusive, particularly in light of the apparent lack of uniformity in the inspection process at each facility. Although it appears that employees represented by the ILWU may perform inbound inspections at more facilities than do IAM-represented employees, it is unclear that the work at those facilities is comparable to the type of inspections performed at Sea-Land. 19 Similarly, there does not appear to be uniformity among the facilities as to the type of outbound inspections that are conducted. Because we are unable conclusively to discern any uniform area or industry practice with respect to the work in dispute, we find that this factor does not favor awarding the disputed work to either group of employees.

# 6. Relative skills

Employees represented by both the IAM and the ILWU have the requisite skills to inspect the equipment for damage. Although employees represented by the IAM also have the skills to evaluate the repairs required on a container and make assessments about the time and material required to repair the container, and can also make repairs on the spot, the work in dispute is limited to the actual inspection of the equipment and does not involve the subsequent steps of assessment and repair. Accordingly, this factor does not favor awarding the disputed work to employees represented by either Union.

## 7. Economy and efficiency of operations

The Employer argues that it is more economical and efficient to assign the task of inspecting containers and chassis to employees represented by the IAM because

SSA Pier 96/San Francisco. At APL/Oakland, container inspection work is shared between clerks represented by ILWU Local 34 and mechanics represented by ILWU Local 10.

<sup>&</sup>lt;sup>19</sup> For example, Ganda testified that the inspections at some of the facilities were "cursory" only.

dual inspection by IAM-represented employees and ILWU-represented employees would result from a work assignment to ILWU-represented employees and is inefficient and costly. Dual inspection causes a significant slowdown of the operation evidenced by increased turn time for truckers at the gates.20 The Employer presented testimony that in October 1995, when employees represented by the ILWU began performing inspections, there was an increased turn time from about 17-18 minutes to 60-65 minutes.<sup>21</sup> Unlike ILWU-represented employees, employees represented by the IAM have all the skills to perform the threestep gate inspection process required by Sea-Land. That process consists of examining the equipment and noting the damage, evaluating the damage and estimating the time and materials required for repair, and the actual repair of minor damage if necessary. As noted above, the employees represented by the ILWU do not have the skills to estimate what is required for repair or to repair damage. Thus, if the initial inspection work is assigned to employees represented by the ILWU, the inspection would have to be done again by an employee represented by the IAM in order to assess what is required for the repair and to perform the actual repair. The Employer's manager, terminal operations, testified that inspections by ILWU-represented clerks are duplicative and unnecessary. We find that it is more efficient for the work to be assigned to employees represented by the IAM.

The Employer also argues that it is more economical to use IAM-represented employees to perform the disputed work because the cost is greater under the ILWU collective-bargaining agreement.<sup>22</sup> The Employer's argument appears to be based in part on the difference in wage rates between the two groups of employees. The Board does not, however, consider wage differentials as a basis for awarding disputed work. *Longshoremen ILA Local 1242 (Rail Distribution Center)*, 310 NLRB 1, 5 fn. 4 (1993). We therefore do not rely on this argument in evaluating this factor.

On the basis of the foregoing evidence, but without reference to wage rate differentials, we find that this factor favors awarding the disputed work to employees represented by the IAM.

## 8. Arbitration award

It is undisputed that in February, 1996, the Coast Arbitrator, Sam Kagel, issued a ruling under the PCCCD that the inspection work should be performed by ILWU-represented employees. However, because the IAM was not a party to that proceeding and has not agreed to be bound by its results, we cannot give dispositive weight to this award. Moreover, in making his decision, Kagel focused solely on the language of the PCCCD and did not take into account the other factors examined by the Board in making a determination of a dispute under Section 10(k). Accordingly, although this factor favors awarding the disputed work to employees represented by the ILWU, we find that this factor does not outweigh other factors favoring awarding the disputed work to employees represented by the IAM.<sup>23</sup>

## Conclusions

After considering all the relevant factors, we conclude that employees represented by Automotive Trades District Lodge No. 190 of Northern California and International Association of Machinists and Aerospace Workers, District Lodge No. 160, Automotive Machinists Lodge No. 289 (IAM) are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and past practice and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by the IAM, not to that union or its members.

# Scope of the Award

The Employer contends that the determination should be broad enough to encompass the geographical area where the Employer does business and where the jurisdictions of the competing unions coincide. It argues that a broad award is necessary to avoid similar jurisdictional disputes.

The Board has customarily declined to grant an areawide award in cases such as this one in which the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. *Laborers* (*Paul H. Schwendener, Inc.*), 304 NLRB 623, 625 (1991).<sup>24</sup> Thus, we find a broad award inappropriate in

<sup>&</sup>lt;sup>20</sup>Turn time is a performance measure for the time it takes a trucker to gate-in and gate-out of the terminal.

<sup>&</sup>lt;sup>21</sup> An increase in turn time causes delays in the loading of ships at the terminal and has an adverse effect on the scheduled sailing time of the vessel. If a vessel sails late it jeopardizes the schedule integrity of the whole service.

<sup>&</sup>lt;sup>22</sup>The Employer estimates that at Oakland the inspection cost per week would be \$5865 if employees represented by the ILWU perform the work and \$3102 if employees represented by the IAM perform the work. At Tacoma, the IAM weekly inspection cost would be \$9485 and the ILWU cost would be \$18,931.

<sup>&</sup>lt;sup>23</sup> See Teamsters Local 222 (Emery Mining Corp.), 262 NLRB 1064, 1068 (1982).

<sup>24</sup> For the Board to issue a broad area-wide award, there must be evidence that the disputed work has been a continuing source of controversy in the relevant geographic area and that similar disputes are likely to recur. There must also be evidence which demonstrates that the charged party has a proclivity to engage in unlawful conduct to obtain work similar to the disputed work. Electrical Workers IBEW Local 211 (Sammons Communications), 287 NLRB 930, 934 (1987). In this case, employees represented by the IAM had been as-

the circumstances of this case. Accordingly, this determination is limited to the controversy that gave rise to this proceeding.<sup>25</sup>

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

signed the work from the outset, and their conduct was aimed at retaining the work in the face of the ILWU's demands.

Employees of Sea-Land Service, Inc./Container Stevedoring, Inc. represented by Automotive Trades District Lodge No. 190 of Northern California and International Association of Machinists and Aerospace Workers, District Lodge No. 160, Automotive Machinists Lodge No. 289 (IAM) are entitled to perform the work functions involving the gate inspection of inbound and outbound containers and trucking equipment at the Port of Oakland, California and the Port of Tacoma, Washington.

<sup>&</sup>lt;sup>25</sup> Because the ILWU is not the charged party in this proceeding, we deny the Employer's request that the Board prohibit the ILWU from filing claims for money damages in lieu of lost work.